

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2366

STATE OF NEW JERSEY
210th LEGISLATURE

ADOPTED NOVEMBER 24, 2003

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SYNOPSIS

Prohibits certain acts involving invasion of privacy.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Judiciary Committee.

(Sponsorship Updated As Of: 12/16/2003)

1 AN ACT concerning invasion of privacy and supplementing chapter 14
2 of Title 2C and Title 2A of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. An actor commits a crime of the fourth degree if, knowing
8 that he is not licensed or privileged to do so, and under circumstances
9 in which a reasonable person would know that another may expose
10 intimate parts or may engage in sexual penetration or sexual contact,
11 he observes another person without that person's consent and under
12 circumstances in which a reasonable person would not expect to be
13 observed.

14 b. An actor commits a crime of the third degree if, knowing that
15 he is not licensed or privileged to do so, he photographs, films,
16 videotapes, records, or otherwise reproduces in any manner, the image
17 of another person whose intimate parts are exposed or who is engaged
18 in an act of sexual penetration or sexual contact, without that person's
19 consent and under circumstances in which a reasonable person would
20 not expect to be observed.

21 c. An actor commits a crime of the third degree if, knowing that
22 he is not licensed or privileged to do so, he discloses any photograph,
23 film, videotape, recording or any other reproduction of the image of
24 another person whose intimate parts are exposed or who is engaged in
25 an act of sexual penetration or sexual contact, unless that person has
26 consented to such disclosure. For purposes of this subsection,
27 "disclose" means sell, manufacture, give, provide, lend, trade, mail,
28 deliver, transfer, publish, distribute, circulate, disseminate, present,
29 exhibit, advertise or offer. Notwithstanding the provisions of
30 subsection b. of N.J.S.2C:43-3, a fine not to exceed \$30,000 may be
31 imposed for a violation of this subsection.

32 d. It is an affirmative defense to a crime under this section that:

33 (1) the actor posted or otherwise provided prior notice to the
34 person of the actor's intent to engage in the conduct specified in
35 subsection a., b., or c., and

36 (2) the actor acted with a lawful purpose.

37 e. (1) It shall not be a violation of subsection a. or b. to observe
38 another person in the access way, foyer or entrance to a fitting room
39 or dressing room operated by a retail establishment or to photograph,
40 film, videotape, record or otherwise reproduce the image of such
41 person, if the actor conspicuously posts at the entrance to the fitting
42 room or dressing room prior notice of his intent to make the
43 observations, photographs, films, videotapes, recordings or other
44 reproductions.

45 (2) It shall be a violation of subsection c. to disclose in any
46 manner any such photograph, film, videotape or recording of another

1 person using a fitting room or dressing room except under the
2 following circumstances:

3 (a) to law enforcement officers in connection with a criminal
4 prosecution;

5 (b) pursuant to subpoena or court order for use in a legal
6 proceeding; or

7 (c) to a co-worker, manager or supervisor acting within the scope
8 of his employment.

9 f. It shall be a violation of subsection a. or b. to observe another
10 person in a private dressing stall of a fitting room or dressing room
11 operated by a retail establishment or to photograph, film, videotape,
12 record or otherwise reproduce the image of another person in a
13 private dressing stall of a fitting room or dressing room.

14 g. For purposes of this act, a law enforcement officer, or a
15 corrections officer or guard in a correctional facility or jail, who is
16 engaged in the official performance of his duties shall be deemed to be
17 licensed or privileged to make and to disclose observations,
18 photographs, films, videotapes, recordings or any other reproductions.

19 h. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
20 provisions of law, a conviction arising under subsection b. of this
21 section shall not merge with a conviction under subsection c. of this
22 section, nor shall a conviction under subsection c. merge with a
23 conviction under subsection b.

24

25 2. a. An actor who, without license or privilege to do so,
26 photographs, films, videotapes, records, or otherwise reproduces in
27 any manner, the image of another person whose intimate parts are
28 exposed or who is engaged in an act of sexual penetration or sexual
29 contact, without that person's consent and under circumstances in
30 which a reasonable person would not expect to be observed, shall be
31 liable to that person, who may bring a civil action in the Superior
32 Court.

33 b. An actor who, without license or privilege to do so, discloses
34 any photograph, film, videotape, recording or any other reproduction
35 of the image of another person whose intimate parts are exposed or
36 who is engaged in an act of sexual penetration or sexual contact,
37 without that person's consent and under circumstances in which a
38 reasonable person would not expect to be observed, shall be liable to
39 that person, who may bring a civil action in the Superior Court. For
40 purposes of this section, "disclose" means sell, manufacture, give,
41 provide, lend, trade, mail, deliver, transfer, publish, distribute,
42 circulate, disseminate, present, exhibit, advertise or offer.

43 c. The court may award:

44 (1) actual damages, but not less than liquidated damages
45 computed at the rate of \$1,000.00 for each violation of this act;

46 (2) punitive damages upon proof of willful or reckless disregard

1 of the law;

2 (3) reasonable attorney's fees and other litigation costs reasonably
3 incurred; and

4 (4) such other preliminary and equitable relief as the court
5 determines to be appropriate.

6

7 3. This act shall take effect immediately.